IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.3327 OF 2004

IN

CRIMINAL APPEAL NO. 218 OF 2004.

Shri Sambhaji Mahadeo Shinde : Applicant.

versus.

The State of Maharashtra : Respondent.

Mr.A.P.Mundergi with Mr.Dinesh Bhosale for the applicant.

Mr.D.R.More, APP, for the State.

CORAM : D.G.DESHPANDE,J.

DATED : 13th August 2004.

P.C.

1. This accused along with others was convicted by the trial Court under different sections viz. 143, 148, 304 Part 2 r/w 149 and Section 323 r/w 149 of the Indian Penal Code and sentenced to suffer R.I. for 6 months each on

each counts and maximum sentence was of seven years under Section 304 Part 2. Other accused i.e. accused Nos. 5, 6, 7, and 8 were released by me on bail by order dated 6th April 2004 and, liberty was granted to this accused to apply for bail after four months and, therefore, this application is filed.

2. Laxmibai (PW 7) was the wife of Rameshwar. She got an order of maintenance against her husband-Rameshwar who gave certain land to her in lieu of maintenance. She started cultivating the land and constructed a house. Remaining land was with her husband. Rameshwar sold his share to accused Nos. 5 and 6 but the land was in possession of Laxmibai. She was obstructing the purchaser from taking possession of the land. From the judgment it appears that Laxmibai had filed a suit about this dispute of possession and, accused Nos. 5 and 6 were annoyed because of this suit.

3. Mr.Mundergi, appearing for the accused, pointed out that the accused had filed a civil suit in the court of C.J.Jr.Division, Pandharpur and in that case an order of injunction was

passed by the trial Court on 3/7/2001 against the defendants Laxmibai and Rameshwar. He has tendered a certified copy of the said judgment. Incident in this crime case has taken place on 7.4.1999 and the ad-interim injunction in favour of Suresh Shivaji Shinde - accused No.5 was granted by the Court on 12.6.1998. It is the case of the prosecution that this accused got annoyed by the civil suit filed and when they went to question the complainant/Laxmibai on 7.4.1999, the accused No.1 took a stick from the hands of accused Balkrishna and dealt a blow of stick on the head of Sideshwar which ultimately proved to be fatal.

4. The accused had an injunction order i.e. interim injunction order in their favour from 12.6.98 in respect of the very property and it is in pursuance of this order that they went to question Laxmibai and her husband about interference and at that time a quarrel took place and in sudden hit of passion this accused had dealt a blow of stick on the head of deceased. Even as per the medical certificate, there is only one injury i.e. CLW 3 x 1 cm. x bone deep resulted in fracture of the sculp.

However, looking to the background and the fact that only one injury was caused by means of stick in sudden hit of passion and, also the fact that injunction order was being in favour of the accused, the accused/applicant be released on his P.R. bond of Rs.5,000/- with one solvent surety in the like amount. This accused will also attend the concerned police station once in a fortnight for six months and thereafter once in a month till the appeal is over. Substantive sentence of the accused is suspended, pending appeal. He will pay the fine before he is released on bail. Application is disposed of.

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